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9 E-mail: lkosch@wpkt.com

10 Attorneys for Defendant  
11 BLOCKBUSTER INC.

FILED

08 JUN 13 PM 12: 23

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: CP DEPUTY

12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA

14 ERIK ELLIOTT, an individual,

15 Plaintiff,

16 v.

17 BLOCKBUSTER, INC., a corporation, and  
18 DOES 1 through 25, inclusive,

19 Defendants.

Case No. 08 CV 1 053 DMS POR

NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441(a)  
(DIVERSITY)

Complaint Filed: April 29, 2008

Dept.:  
Judge: Hon.  
Trial Date: Not Set

20 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

21 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1441(a), Defendant  
22 BLOCKBUSTER INC. ("Defendant") hereby removes this action from the Superior Court of the  
23 State of California, County of San Diego, Hall of Justice to the United States District Court for the  
24 Southern District Of California, and sets forth in support of its Notice of Removal of Action the  
25 following:

26 1. On April 29, 2008, Plaintiff Erik Elliott ("Plaintiff") commenced this action in the  
27 Superior Court of the State of California, County of San Diego, Hall of Justice entitled *Erik Elliott v.*  
28 *Blockbuster, Inc.*, Case No. 37-2008-00082941-CU-WT-CTL.

29 2. Plaintiff's Complaint alleges the following causes of action against Defendant:  
30 (1) Religious Intimidation; (2) Physical Disability Discrimination; (3) Wrongful Termination in  
31 Violation of Public Policy (California Government Code § 12926 *et seq.*; and (4) Retaliation.

1       3.       Blockbuster Inc. was personally served with the Summons and Complaint on May 15,  
2 2008. A true and correct copy of the Proof of Service of Summons and Complaint are attached  
3 hereto as Exhibit 1.

4       4.       This is a civil action over which this Court has original jurisdiction under the  
5 provisions of 28 U.S.C. § 1332, and may be removed to this Court by the Defendant pursuant to the  
6 provisions of 28 U.S.C. § 1441(a) because it is a civil action between citizens of different states and  
7 it appears from the face of the Complaint that the matter in controversy herein exceeds the sum or  
8 value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

9       5.       Defendant is informed and believes that Plaintiff Erik Elliott was, at the  
10 commencement of this action in state court, and still is, a citizen of the State of California.

11       6.       Defendant Blockbuster Inc. was, at the time this action was filed in state court, and  
12 still is, a corporation incorporated under the laws of the State of Delaware, having its principal place  
13 of business in the State of Texas, and was not and is not a citizen of the State of California.

14       7.       The Complaint also names Defendants Does 1 to 25. Pursuant to 28 U.S.C. §  
15 1441(a), the citizenship of these defendants is disregarded.

16       8.       Defendant is informed and believes from the face of the Complaint that the amount in  
17 controversy in this action exceeds \$75,000, exclusive of interests and costs.

18       9.       Plaintiff, a former Blockbuster store manager, alleges he was unlawfully  
19 discriminated against and that, as a direct result of Defendant's unlawful employment practices, he  
20 has suffered loss of wages and benefits. (Ex. 1 at ¶¶ 28, 37 and 46.) Plaintiff claims: (1) substantial  
21 losses in earnings and other employment benefits and opportunities; and (2) emotional distress, loss  
22 of reputation, mental and physical pain and anguish. (*Id.* at ¶¶ 28, 30, 31, 37, 38, 39, 44 and 46.)

23       10.       Plaintiff seeks attorneys' fees and cost of suit, as well as punitive damages. (*Id.* at  
24 ¶¶ 32, 33, 40, 41, 47 and 49.)

25       11.       This Notice of Removal is being filed within thirty (30) days after service on  
26 Blockbuster Inc. of Plaintiff's summons and complaint in this action and therefore is timely filed  
27 under 28 U.S.C. § 1446(b). (*Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689 (2005).)

1           12.    This Notice of Removal is being filed within one (1) year of the commencement of  
2 this action and therefore is timely filed under 28 U.S.C. § 1446(b).

3           13.    Removal to this Court is proper as the Superior Court of the State of California,  
4 County of San Diego, Hall of Justice, where this action was originally filed, is located within this  
5 district.

6           14.    To the best of Defendant's knowledge, Exhibit 1 constitutes all of the process,  
7 pleadings and orders served upon defendants at the time of this removal.

8           15.    Counsel for Defendant certifies that it will file a copy of this Notice of Removal with  
9 the Clerk of the Superior Court of the State of California, County of San Diego, and give notice of  
10 same to counsel for Plaintiff.

11  
12 Dated:     June 13, 2008

**WILSON PETTY KOSMO & TURNER LLP**

13  
14 By: 

15 CLAUDETTE G. WILSON  
16 LOIS M. KOSCH  
17 Attorneys for Defendant  
18 BLOCKBUSTER INC.  
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<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6058	
PLAINTIFF(S) / PETITIONER(S): Erik Elliot	
DEFENDANT(S) / RESPONDENT(S): Blockbuster Inc.	
ELLIOT VS. BLOCKBUSTER INC	
<b>NOTICE OF CASE ASSIGNMENT</b>	CASE NUMBER: 37-2008-00082941-CU-WT-CTL

Judge: John S. Meyer

Department: C-61

COMPLAINT/PETITION FILED: 04/29/2008

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00082941-CU-WT-CTL CASE TITLE: Elliot vs. Blockbuster Inc

**NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE**

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

**ADR POLICY**

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

**ADR OPTIONS**

**1) CIVIL MEDIATION PROGRAM:** The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

**Assignment to Mediation, Cost and Timelines:** Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

**2) JUDICIAL ARBITRATION:** Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

**Assignment to Arbitration, Cost and Timelines:** Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

**3) SETTLEMENT CONFERENCES:** The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

**4) OTHER VOLUNTARY ADR:** Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

**ADDITIONAL ADR INFORMATION:** For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Dale R. Larabee, Esq. (SBN 50962) Joel D. Larabee, Esq. (SBN 243117) LARABEE GIENAPP LARABEE 2120 Fourth Avenue, San Diego, CA 92101 TELEPHONE NO.: 619-234-3054 FAX NO.: ATTORNEY FOR (Name): Plaintiff - ERIK ELLIOT		FOR COURT USE ONLY <b>FILED</b> CIVIL BUSINESS OFFICE 5 CENTRAL DIVISION 2008 APR 29 P 4:28 CLERK SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, 92101 BRANCH NAME: Hall of Justice		
CASE NAME: ERIK ELLIOT v BLOCKBUSTER, INC., et al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: 37-2008-00082941-CU-WT-CTL JUDGE: DEPT:
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- |   |  |   |
|---|--|---|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input checked="" type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation</b><br>(Cal. Rules of Court, rules 3.400-3.403)<br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Four
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 29, 2008

Dale R. Larabee

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>		<b>FOR COURT USE ONLY</b>
STREET ADDRESS: 330 West Broadway		
MAILING ADDRESS: 330 West Broadway		
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827		
BRANCH NAME: Central		
PLAINTIFF(S): Erik Elliot		
DEFENDANT(S): Blockbuster Inc		
SHORT TITLE: ELLIOT VS. BLOCKBUSTER INC		
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)</b>		CASE NUMBER: 37-2008-00082941-CU-WT-CTL

Judge: John S. Meyer

Department: C-61

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- |   |   |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program                   | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration           |
| <input type="checkbox"/> Private Neutral Evaluation                         | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial                                 | <input type="checkbox"/> Private Reference to General Referee           |
| <input type="checkbox"/> Private Summary Jury Trial                         | <input type="checkbox"/> Private Reference to Judge                     |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration                    |
| <input type="checkbox"/> Other (specify): _____                             |   |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Alternate: (mediation & arbitration only) \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 04/29/2008

JUDGE OF THE SUPERIOR COURT

SDSC CIV-359 (Rev 01-07)

STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION

Page: 1

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6058	
PLAINTIFF(S) / PETITIONER(S): Erik Elliot	
DEFENDANT(S) / RESPONDENT(S): Blockbuster Inc	
ELLIOT VS. BLOCKBUSTER INC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00082941-CU-WT-CTL

Judge: John S. Meyer

Department: C-61

COMPLAINT/PETITION FILED: 04/29/2008

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

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**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

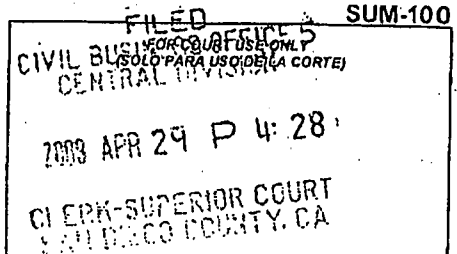
YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

# SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

BLOCKBUSTER, INC., a corporation, and DOES 1 through 25,  
inclusive.

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
ERIK ELLIOTT



You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):  
Superior Court of California, San Diego  
330 W. Broadway  
San Diego, CA 92101

CASE NUMBER:  
(Número del Caso)  
37-2008-00082941-CU-WT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Dale R. Larabee, Esq.

2120 Fourth Avenue, San Diego, CA 92101

(619) 234-3054

B. Orihuela

DATE: APR 29 2008  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☒ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)  
☐ other (specify):

4. ☐ by personal delivery on (date):

Blockbuster, Inc., A Corporation



CORPORATION SERVICE COMPANY

## Notice of Service of Process

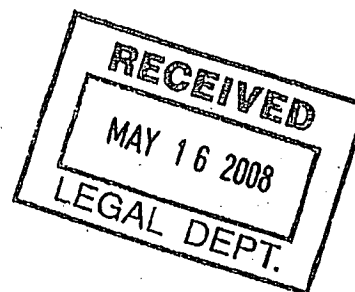
BZT / ALL  
Transmittal Number: 5782105  
Date Processed: 05/15/2008

Primary Contact: Bryan Stevenson  
Blockbuster Inc.  
1201 Elm Street  
Suite 2100 Renaissance Tower  
Dallas, TX 75270-2102

---

Entity:	Blockbuster Inc. Entity ID Number 1666926
Entity Served:	Blockbuster, Inc.
Title of Action:	Erik Elliott vs. Blockbuster, Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Discrimination
Court:	San Diego Superior Court, California
Case Number:	37-2008-00082941-CU-WT-CTL
Jurisdiction Served:	California
Date Served on CSC:	05/15/2008
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Dale Larabee 619-234-3054

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC  
CSC is SAS70 Type II certified for its Litigation Management System.  
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

Dale Larabee Esq. SB #50962  
 Joel Larabee, Esq. SB #243117  
 LAW OFFICES OF  
 LARABEE GIENAPP LARABEE, APC  
 2120 FOURTH AVENUE  
 SAN DIEGO, CALIFORNIA 92101  
 TELEPHONE: (619) 234-3054  
 TELECOPIER: (619) 234-3001

FILED  
 CIVIL BUSINESS OFFICE 5  
 CENTRAL DIVISION

2008 APR 29 P 4:28

CLERK SUPERIOR COURT  
 SAN DIEGO COUNTY, CA

Attorneys for Plaintiff,  
 ERIK ELLIOTT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 IN AND FOR THE COUNTY OF SAN DIEGO

ERIK ELLIOTT, an individual,  
 Plaintiff,

v.

BLOCKBUSTER, INC., a corporation, and  
 DOES 1 through 25, inclusive,  
 Defendants.

Case No. 37-2008-00082941-CU-WT-CTL

**PLAINTIFF'S COMPLAINT FOR**  
 (1) Religious Intimidation;  
 (2) Physical Disability Discrimination;  
 (3) Wrongful Termination in Violation of  
 Public Policy (California Government  
 Code § 12926 et seq.); and  
 (4) Retaliation

[JURY TRIAL DEMANDED]  
 [ATTORNEYS' FEES DEMANDED GOV.  
 CODE §12965 ET SEQ]

COMES NOW THE PLAINTIFF, alleging against Defendants as follows:

**GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1. Plaintiff, ERIK ELLIOTT, (hereinafter "Plaintiff" or "ELLIOTT") is and at all times herein mentioned was a resident of the County of San Diego in the State of California.

2. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, BLOCKBUSTER, INC., (hereinafter "BLOCKBUSTER") is a business entity authorized for, and doing business in the State of California, and is an entity subject to suit under the California Fair Employment and Housing Act, Government Code §12940 et seq. On

1 information and belief BLOCKBUSTER, employs in excess of five employees in San Diego  
2 County.

3 3. At all times material to this complaint, BLOCKBUSTER was doing business in San  
4 Diego County, State of California, within the above captioned judicial district. Many of the acts  
5 complained of herein took place within said judicial district.

6 4. Plaintiff is informed and believes and thereon alleges that at all times herein  
7 mentioned, DOUG RICE (hereinafter "RICE") an individual, who was and is employed as a  
8 managing agent at BLOCKBUSTER, and at all relevant times, was a manager of ELLIOTT.  
9 Plaintiff is informed and believes and thereon alleges RICE is a "supervisor" and a "managing  
10 agent" of BLOCKBUSTER's.

11 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as  
12 Does 1 through 25 and therefore sues these defendants by such fictitious names. Plaintiff will  
13 amend this Complaint to allege the true names and capacities when they are ascertained.

14 6. Plaintiff is informed and believes and thereon alleges that each fictitiously named  
15 defendant is responsible in some manner for the occurrences herein alleged and Plaintiff's  
16 injuries and damages as herein alleged are directly, proximately and/or legally caused by  
17 defendants and all of their acts.

18 7. Plaintiff is informed and believes and thereon alleges that all of these defendants  
19 named herein as DOES are the agents, employers, representatives or employees of the other  
20 named defendants and when performing the acts alleged herein, were acting within the scope of  
21 their agency, employment and/or representative capacity and are therefore responsible for the acts  
22 complained of herein.

23 8. The tortious acts and omissions alleged to have occurred herein were performed by  
24 defendants or authorized or ratified by them.

25 9. The actions of defendants, and each of them, against the plaintiff constitute unlawful  
26 employment practices in violation of California Government Code § 12940, et seq., and have  
27 caused, and will continue to cause plaintiff loss of earnings and other damages.

28 10. As a further legal (proximate) result of the unlawful and intentional discriminatory  
actions of defendants, and each of their agents, against Plaintiff as alleged herein, Plaintiff has  
been harmed in that he has suffered emotional pain, humiliation, mental anguish, loss of

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2120 FOURTH AVENUE  
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1 enjoyment of life, and emotional distress.

2 11. Defendants committed these acts alleged herein maliciously, fraudulently, and  
3 oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper  
4 and evil motive amounting to malice or despicable conduct. Alternatively, Defendants' wrongful  
5 conduct was carried out with a conscious disregard for Plaintiff's rights.

6 12. Defendants' conduct warrants the assessment of punitive damages in an amount  
7 sufficient to punish defendants and deter other from engaging in similar conduct.

8 13. Defendants are "supervisors" or "managers" within the meaning of California  
9 Government Code §12940, et seq.

10 14. Plaintiff seeks compensatory damages, punitive damages, costs of suit herein, and  
11 attorneys' fees pursuant to Cal. Gov't Code §12940 et seq.

12 15. On March 20, 2008, ELLIOTT was wrongfully fired by RICE. Plaintiff ELLIOTT  
13 filed his charges of discrimination with the California Department of Fair Employment and  
14 Housing on April 2, 2008, and thereafter received from the DFEH his "right to sue" letters on  
15 April 9, 2008 which are collectively attached hereto as "EXHIBIT A."

#### 16 SPECIFIC FACTUAL ALLEGATIONS

17 16. Plaintiff re-alleges and incorporates by reference each and every allegation contained  
18 in the preceding paragraphs as though fully set forth herein.

19 17. ELLIOTT was hired by BLOCKBUSTER on December 10, 1997. ELLIOTT is an  
20 insulin dependent diabetic and has been so at all times he was employed by BLOCKBUSTER.  
21 Defendants knew of ELLIOTT's physical condition. "Diabetes is a physical impairment under  
22 the ADA "because it is a physical condition affecting the digestive, hemic, and endocrine  
23 systems." *Fraser v. Goodale* (9<sup>th</sup> Cir. 2003, 343 F3d 1032, 1038). When fired, ELLIOTT was a  
24 store manager and had been a BLOCKBUSTER store manager for seven (7) years.

25 18. Throughout her employment with Defendant, ELLIOTT performed the duties of his  
26 work assignments in a capable and competent manner and has been so recognized by  
27 BLOCKBUSTER for her outstanding performance as recently in March 2008.

28 19. On October 11, 2007, RICE ordered a district meeting be held at his church, the  
Mission Hills Church in San Marcos California. RICE arranged that the all day mandatory  
meeting of store managers, including ELLIOTT, be held in the Courtyard Café at the Mission

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SAN DIEGO, CALIFORNIA 92101

1 Hills, Church, which RICE made sure all in attendance knew that RICE managed the Church  
2 Café. Prior to the meeting, RICE told ELLIOTT and the other BLOCKBUSTER employees  
3 RICE had instructed to attend this all day meeting of the Church website and e-mail address.  
4 RICE told ELLIOTT and other employees at the meeting that he "would love to see them at  
5 Church" and that "they could come to enjoy RICE's café after church." RICE gave ELLIOTT  
6 and other BLOCKBUSTER employees who attended the mandatory BLOCKBUSTER meeting a  
7 card they could use at the Courtyard Café, a card that proselytized the Church Mission, including,  
8 "For where two or three come together in my name, there am I with them." *Matthew 18:20 NIV*."

9 (a) RICE alluded during the day long meeting that "his" church was a new church and he  
10 was "involved" on a very personal basis.

11 (b) The card RICE gave ELLIOTT and the other BLOCKBUSTER employees entitled  
12 them to credit at RICE'S Courtyard Café at RICE's church. RICE told ELLIOTT and the other  
13 BLOCKBUSTER employees he was inviting them back to "Sunday services" and "they could  
14 use their gift cards at the café when the services were over." RICE said he was at the Café on  
15 Sundays.

16 (c) ELLIOTT perceived RICE's actions and remarks as intimidating. ELLIOTT chose  
17 not to return to RICE's Church.

18 (d) At least one store manager who attended RICE's church and café meeting told  
19 ELLIOTT that she wasn't going to take the chance and not go.

20 (e) In December 2007, ELLIOTT bought a condominium. BLOCKBUSTER was asked to  
21 and signed documents authenticating ELLIOTT's income.

22 (f) On February 22, 2008, RICE wrote ELLIOTT up for a number of "deficiencies" he  
23 found in ELLIOTT's store. RICE also said to ELLIOTT in the presence of customers, "I can't  
24 believe you lasted this long in this store, this store is way too busy for you, you belong in a low  
25 revenue store."

26 (g) On March 4, 2008, at a regional meeting of BLOCKBUSTER, ELLIOTT was  
27 recognized by the BLOCKBUSTER Regional Director of Operations for the "Second Best  
28 Rewards accomplishment in his Region." ELLIOTT was asked to stand for applause. RICE sat  
with his head down and hands between his knees.

1 20. On March 20, 2008, RICE came to ELLIOTT's store at 8:30 a.m. RICE said to  
 2 ELLIOTT, "I have some bad news, you are fired." "You belong in a lower revenue store." When  
 3 ELLIOTT said he had been with BLOCKBUSTER for 10 years and why wasn't he being given a  
 4 chance for a lower revenue store, RICE said, "There is no room for you here and it's too late for I  
 5 have already fired you." "I gave you a clean slate because your last two district leaders were  
 6 going to fire you." This last statement is false, known by RICE to be false and said to ELLIOTT  
 7 to cause him to believe it was true. RICE then said, "All right, it is time for you to go. I need to  
 8 bring in the new store manager now."

9 21. RICE'S acts were malicious, in part false, and intended to cause severe financial and  
 10 personal harm and damage to ELLIOTT which they did.

# 11 FIRST CAUSE OF ACTION

## 12 (RELIGIOUS INTIMIDATION v. All Defendants)

13 22. Plaintiff re-alleges and incorporates by reference each and every allegation contained  
 14 in the preceding paragraphs as though fully set forth.

15 It is an unlawful employment practice in California for an employer

16 (1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate  
 17 against any individual with respect to his compensation, terms, conditions, or privileges of  
 18 employment, because of such individual's religion;

19 (2) to limit or classify employees in any way which would deprive or tend to deprive any  
 20 individual of employment opportunities or otherwise adversely affect his status as an employee,  
 21 because of such individual's religion.

22 23. At all times mentioned herein, California Government Code § 12940 et seq. was in  
 23 full force and effect and was binding on Defendants. This section requires BLOCKBUSTER, as  
 24 an employer, and RICE as a supervisor to refrain from discriminating against or harassing or  
 25 creating a hostile environment for any employee on the basis of his religion or non-religion or  
 26 perception of either.

27 24. Plaintiff is informed and believes, and thereon alleges, that his religious beliefs or  
 28 lack thereof was a motivating factor in Defendants' adverse actions, directed against him as set  
 forth herein including his termination. Such actions are unlawful, harassing, discriminatory, and

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 SAN DIEGO, CALIFORNIA 92101

1 retaliatory in violation of Government Code Section 12940 et seq., and have resulted in damage  
2 and injury to Plaintiff, as alleged herein.

3 25. Defendants' conduct created a hostile work environment extremely detrimental to  
4 ELLIOTT'S emotional and physical health, interfered with ELLIOTT'S work performance and  
5 caused ELLIOTT severe emotional distress.

6 26. At all times, ELLIOTT felt that RICE's actions and intimidation of ELLIOTT were  
7 unwelcome, discriminatory, oppressive, offensive and intimidating.

8 27. At all times, Defendant BLOCKBUSTER knowingly ratified, sanctioned and  
9 condoned the discriminatory and harassing conduct. The event was a BLOCKBUSTER  
10 organized event.

11 28. As a proximate result of Defendants' willful, knowing and intentional discrimination  
12 and harassment against ELLIOTT, he has sustained, and continues to sustain, substantial losses  
13 in earnings and other employment benefits and opportunities. Plaintiff has been damaged in an  
14 amount according to proof at trial.

15 30. As a proximate result of Defendants' willful, knowing and intentional discrimination  
16 and harassment of ELLIOTT, he has sustained, and continues to sustain, such intangible loss of  
17 employment-related opportunities and experience in the position which ELLIOTT would have  
18 garnered. Plaintiff has been damaged in an amount according to proof at trial.

19 31. As a proximate result of Defendants' willful, knowing and intentional discrimination  
20 and harassment of ELLIOTT, ELLIOTT has suffered, and continues to suffer, humiliation,  
21 emotional distress, loss of reputation, and mental and physical pain and anguish, all to his  
22 damage in a sum to be established according to proof.

23 32. As a result of Defendants' deliberate, outrageous, despicable conduct, ELLIOTT is  
24 entitled to recover punitive and exemplary damages in an amount commensurate with each of  
25 Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible  
26 conduct.

27 33. ELLIOTT has incurred and continues to incur legal expenses and attorneys' fees.

## 28 SECOND CAUSE OF ACTION

### (DISABILITY DISCRIMINATION v. Employer Defendant Only)

34. Plaintiff re-alleges and incorporates by reference each and every allegation

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1 contained in the preceding paragraphs as though fully set forth herein.

2  
3 35. At all times mentioned herein, California Government Code Section 12940 et  
4 seq. was in full force and effect and was binding on Defendants. This section requires  
5 Defendants, as employers, to refrain from discriminating against or harassing any employee on  
6 the basis medical condition of physical disability. Cal. Gov. Code § 12926 (k) et seq. At all times  
7 he worked for BLOCKBUSTER, ELLIOTT was an insulin dependent diabetic which was a  
8 physical disability that limits major life activities including eating, sleeping, exercise and  
9 working. BLOCKBUSTER also regarded ELLIOTT as having a physical condition/disability that  
10 made achievement of one or more major life activity difficult. Cal. Gov. Code § 12926 (k) (iii)  
11 (4) (5).

12 36. ELLIOTT believes and thereon alleges that his psychical disability or  
13 BLOCKBUSTER's perception thereof was a motivating factor in BLOCKBUSTER's decision to  
14 terminate his employment. Such actions were unlawful, discriminatory, and retaliatory in  
15 violation of Government Code Section 12940 et seq., and have resulted in damage and injury to  
16 ELLIOTT, as alleged herein.

17 37. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has  
18 sustained and continues to sustain substantial losses in earnings, employment benefits, and  
19 employment opportunities. Plaintiff has suffered other economic losses in an amount to be  
20 determined at time of trial. Plaintiff has reasonably mitigated these damages. Plaintiff has been  
21 damaged in an amount according to proof at trial.

22 38. As a proximate result of Defendants' willful, knowing and intentional discrimination  
23 and harassment against ELLIOTT, he has sustained, and continues to sustain, such intangible loss  
24 of employment-related opportunities and experience in the position, which ELLIOTT would have  
25 garnered. Plaintiff has been damages in an amount according to proof at trial.

26 39. As a proximate result of Defendants' willful, knowing and intentional discrimination  
27 and harassment against Plaintiff, ELLIOTT has suffered and continues to suffer humiliation,  
28 emotional distress, loss of reputation, and mental and physical pain and anguish, all to his  
damage in a sum to be established according to proof.

40. As a result of Defendants' deliberate, outrageous, despicable conduct, plaintiff is  
entitled to recover punitive and exemplary damages in an amount commensurate with each of

1 Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible  
2 conduct.

3 41. In addition to such other damages as may properly be recovered herein, plaintiff is  
4 entitled to recover prevailing party attorney fees.

### 5 THIRD CAUSE OF ACTION

#### 6 (WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

7 (Cal. Gov't Code §12940) v. Employer Defendants Only)

8 42. Plaintiff re-alleges and incorporates by reference each and every allegation contained  
9 in the preceding paragraphs as though fully set forth herein.

10 43. Defendant BLOCKBUSTER, by and through its managing agents and/or employees,  
11 violated the public policy of California by intimidating and discriminating against ELLIOTT.  
12 Further, in terminating ELLIOTT as alleged herein, Defendant BLOCKBUSTER violated the  
13 express public policy of this state.

14 44. Defendant BLOCKBUSTER'S conduct was intentional and malicious and done for  
15 the purpose of causing ELLIOTT to suffer monetary damages, humiliation, mental anguish, and  
16 emotional and physical distress.

17 45. Defendant BLOCKBUSTER'S conduct in condoning and ratifying the above-  
18 referenced conduct of its managing agents was done with knowledge that ELLIOTT'S emotional  
19 and physical distress would increase and was done with a wanton and reckless disregard of the  
20 consequences to ELLIOTT.

21 46. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has  
22 sustained and continues to sustain substantial losses in earnings, employment benefits,  
23 employment opportunities, and Plaintiff has suffered other economic losses in an amount to be  
24 determined at time of trial. Plaintiff has sought to mitigate these damages as a proximate result  
25 of Defendants' willful, knowing and intentional discrimination and harassment against  
26 ELLIOTT, who has sustained, and continues to sustain, such intangible loss of employment-  
27 related opportunities and experience in the position which ELLIOTT would have garnered.  
28 Plaintiff has been damaged in an amount according to proof at trial.

47. As a proximate result of Defendants' willful, knowing and intentional discrimination,  
harassment, and termination of plaintiff, ELLIOTT has suffered and continues to suffer

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1 humiliation, emotional distress, loss of reputation, mental and physical pain and anguish, general  
2 and special damages in a sum to be established according to proof.

3 49. As a result of Defendants' deliberate, outrageous, despicable conduct, Plaintiff is  
4 entitled to recover punitive and exemplary damages in an amount commensurate with each of  
5 Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible  
6 conduct.

7 50. In addition to such other damages as may properly be recovered herein, Plaintiff is  
8 entitled to recover prevailing party attorney fees.

9 **FOURTH CAUSE OF ACTION**  
10 **(RETALIATION v. All Defendants)**

11 51. Plaintiff re-alleges and incorporates by reference each and every allegation contained  
12 in the preceding paragraphs as though fully set forth herein.

13 52. Defendants' retaliated against ELLIOTT for ELLIOTT's refusal to submit to the  
14 religious intimidation of BLOCKBUSTER. Defendants terminated ELLIOTT motivated in part  
15 by ELLIOTT's refusal to succumb to BLOCKBUSTER's efforts to coerce ELLIOTT to attend  
16 and/or join RICE's church. Plaintiff did suffer severe economic loss and non-economical  
17 damages and harm caused by Defendants' acts that were intentional, malicious, and despicable  
18 and entitle Plaintiff to punitive damages as detailed in Plaintiff's preceding paragraphs.

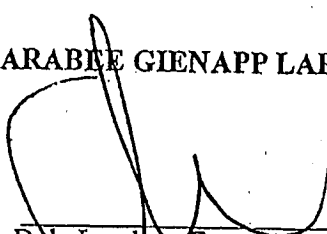
19  
20 WHEREFORE, Plaintiff prays for the following relief:

- 21 1. For compensatory damages, including loss of wages, promotional opportunities, benefits and
- 22 other opportunities of employment, according to proof;
- 23 2. For general and special damages according to proof;
- 24 3. For an award of interest, including prejudgment interest, at the legal rate;
- 25 4. For reasonable attorney fees;
- 26 5. For punitive and exemplary damages in an amount sufficient to punish and deter defendants'
- 27 outrageous conduct;
- 28 6. For costs of suit herein; and
7. For such other and further relief that the court deems just and proper.

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SAN DIEGO, CALIFORNIA 92101

1  
2  
3  
4 DATED: April 29, 2008

LARABEE GIENAPP LARABEE, APC

  
Dale Larabee, Esq.  
Attorney for Plaintiff

LARABEE GIENAPP LARABEE, APC  
2120 FOURTH AVENUE  
SAN DIEGO, CALIFORNIA 92101



STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

1350 Front Street, Suite 3005 San Diego, CA 92101  
(619) 645-2681 TTY (800) 700-2320 Fax (619) 645-2683  
www.dfeh.ca.gov



April 9, 2008

ERIK ELLIOT  
2501 NAVARRA DR #112  
CARLSBAD, CA 92009

RE: E200708D1312-00-pc  
ELLIOT/Blockbuster, Inc.

Dear ERIK ELLIOT:

**NOTICE TO COMPLAINANT'S ATTORNEY**

Enclosed is a copy of your client's complaint of discrimination filed with the Department of Fair Employment and Housing on 4/4/2008 pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also enclosed is a copy of your client's Notice of Case Closure, which constitutes your client's right-to-sue notice.

Please note that under Government Code section 12962, you are responsible for service of the complaint on respondent(s). You should also enclose a copy of the Notice of Case Closure along with the complaint. These documents must be served within 60 days of the filing date of the complaint. Government Code section 12962(b) further provides that complaints must be served either personally or by certified mail with return receipt requested.

For additional information, please read the enclosed Notice of Case Closure that explains the conditions for filing a private lawsuit in the State of California.

Sincerely,

*Belinda LeDoux*

Belinda LeDoux  
District Administrator

Enclosure: Complaint of Discrimination  
Notice of Case Closure

DFEH-200-06 (01/05)

## \*\*\* EMPLOYMENT \*\*\*

COMPLAINT OF DISCRIMINATION UNDER  
THE PROVISIONS OF THE CALIFORNIA  
FAIR EMPLOYMENT AND HOUSING ACT

DFEH #

E200708D-1312PC

DFEH USE ONLY

## CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (indicate Mr. or Ms.)

Mr. Erik Elliot

TELEPHONE NUMBER (INCLUDE AREA CODE)

760-505-3499

ADDRESS

2501 Navarra Drive #112

CITY/STATE/ZIP

Carlsbad, CA 92009

COUNTY  
San Diego

COUNTY CODE

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,  
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME

Blockbuster, Inc.

TELEPHONE NUMBER (Include Area Code)

760-943-7801

ADDRESS

1080 North El Camino Real

DFEH USE ONLY

CITY/STATE/ZIP

Encinitas, CA 92024

COUNTY

COUNTY CODE

NO. OF EMPLOYEES/MEMBERS (if known)

5000 +

DATE MOST RECENT OR CONTINUING DISCRIMINATION  
TOOK PLACE (month, day, and year) 03/20/2008

RESPONDENT CODE

THE PARTICULARS ARE:

03/20/08

I was

☒ fired☐ laid off☐ demoted☐ harassed☐ genetic characteristics testing☐ forced to quit☐ denied employment☐ denied promotion☐ denied transfer☐ denied accommodation☐ impermissible non-job-related inquiry☐ other (specify)☐ denied family or medical leave☐ denied pregnancy leave☐ denied equal pay☐ denied right to wear pants☐ denied pregnancy accommodation

by Douglas Rice-District Manager

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of my:

☐ sex☐ national origin/ancestry☒ physical disability☐ cancer☐ age☐ marital status☐ mental disability☐ genetic characteristic☒ religion☐ sexual orientation☒ other (specify) Diabetes☐ race/color☐ association☒ (Circle one) filing;

Protesting; participating in

investigation (retaliation for)

Not attending

DM's Church

the reason given by Douglas Rice, District Manager

Name of Person and Job Title

Was because Job inadequacies

[please

state what

you believe to

be reason(s)]

I refused his efforts to attend Rice's church and my disease.

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue notice. I understand that if I want a federal notice of right-to-sue, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated

April 3, 2008

At

San Diego, CA

City

COMPLAINANT'S SIGNATURE

APR 04 2008

DATE FILED: April 4, 2008

SAN DIEGO  
DISTRICT OFFICE

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

ARNOLD SCHWARZENEGGER, Governor

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

1350 Front Street, Suite 3005 San Diego, CA 92101  
(619) 645-2681 TTY (800) 700-2320 Fax (619) 645-2683  
www.dfeh.ca.gov



April 9, 2008

ERIK ELLIOT  
2501 NAVARRA DR #112  
CARLSBAD, CA 92009

RE: E200708D1312-00-pc  
ELLIOT/Blockbuster, Inc.

Dear ERIK ELLIOT:

**NOTICE OF CASE CLOSURE**

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective April 4, 2008 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

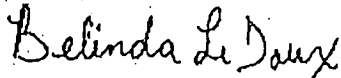
This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure  
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Belinda LeDoux  
District Administrator

cc: Case File

Director  
Personnel/Human Resources  
Blockbuster, Inc.  
1080 No El Camino Real  
Encinitas, CA 92024

DFEH-200-43 (06/06)

1 WILSON PETTY KOSMO & TURNER LLP  
2 CLAUDETTE G. WILSON (110076)  
3 LOIS M. KOSCH (131859)  
4 550 West C Street, Suite 1050  
San Diego, California 92101  
Telephone: (619) 236-9600  
Facsimile: (619) 236-9669

5 Attorneys for Defendant  
6 BLOCKBUSTER INC.

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**  
10

11 ERIK ELLIOTT, an individual,

12 Plaintiff,

13 v.

14 BLOCKBUSTER, INC., a corporation, and  
15 DOES 1 through 25, inclusive,

16 Defendants.

Case No. 37-2008-00082941-CU-WT-CTL

**DEFENDANT BLOCKBUSTER INC.'S  
ANSWER TO COMPLAINT**

Complaint Filed: April 29, 2008

Dept.: C-61

Judge: Hon. John S. Meyer

Trial Date: Not Set

17  
18 Defendant BLOCKBUSTER INC. ("Defendant"), erroneously sued as Blockbuster, Inc.,  
19 hereby answers the verified Complaint of Plaintiff ERIK ELLIOTT (hereinafter "Plaintiff") on file  
20 herein as follows:

21 **I.**

22 **GENERAL DENIAL**

23 1. Pursuant to California Code of Civil Procedure Section 431.30(d), Defendant  
24 generally denies each and every allegation in each and every paragraph and cause of action in  
25 Plaintiff's Complaint, denies that Plaintiff was injured or has suffered damages in any sum and  
26 further denies that Plaintiff is entitled to the relief claimed, or any relief, on the grounds alleged or  
27 otherwise.  
28

II.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State Causes of Action)

2. The Complaint and each and every purported cause of action thereof fails to state facts sufficient to constitute any cause of action against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

(Failure to Mitigate)

3. Without admitting the allegations of the Complaint, Defendant alleges that if Plaintiff suffered any loss or damage, such loss or damage was proximately caused, at least in part, by Plaintiff's own failure to mitigate against his alleged damages and that, therefore, Plaintiff's claims must be reduced, diminished or defeated by such amounts as should have been so mitigated.

**THIRD AFFIRMATIVE DEFENSE**

(At-Will Employment)

4. Any recovery on Plaintiff's Complaint or any purported claim or cause of action alleged therein is barred because the term of employment of Plaintiff was unspecified and therefore terminable at-will, without or without cause, pursuant to California Labor Code Section 2922.

**FOURTH AFFIRMATIVE DEFENSE**

(Punitive Damages Unconstitutional)

5. Regarding all of Plaintiff's causes of action, imposition of punitive damages would violate Defendant's due process and equal protection rights under the United States Constitution.

**FIFTH AFFIRMATIVE DEFENSE**

(Insufficient Allegations of Punitive Damages Against Corporation)

6. Regarding all of Plaintiff's causes of action, Plaintiff's allegations are insufficient to sustain the imposition of punitive damages against Defendant.

**SIXTH AFFIRMATIVE DEFENSE**

(Workers' Compensation Preemption)

7. Without admitting the allegations of the Complaint, all claims for physical or

1 emotional damages other than those arising out of discrimination are preempted by the California  
2 Workers' Compensation Act.

3 **SEVENTH AFFIRMATIVE DEFENSE**

4 (Statute of Limitations)

5 8. All Plaintiff's causes of action are barred by the applicable statutes of limitations,  
6 including, without limitation, California Code of Civil Procedure Sections 335.1, 337, 338, 338.2,  
7 338.3, 338.4, 339, 339.1, 340, and 343 and California Government Code 12900 et seq., and 42 USC  
8 §2000e et seq.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 (ERISA Preemption)

11 9. Damages sought for lost employment benefits in all of Plaintiff's causes of action are  
12 preempted by the Employment Retirement Income Security Act of 1974.

13 **NINTH AFFIRMATIVE DEFENSE**

14 (Justification and Privilege)

15 10. Regarding all of Plaintiff's causes of action, Defendant's alleged conduct was justified  
16 and privileged.

17 **TENTH AFFIRMATIVE DEFENSE**

18 (Statute of Frauds)

19 11. Regarding Plaintiff's causes of action, Plaintiff is barred from recovery under the  
20 statute of frauds.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 (Lack of Outrageous Conduct)

23 12. Regarding Plaintiff's causes of action, Plaintiff is barred from recovery because  
24 Defendant's conduct did not rise to the level of outrageous conduct.

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 (Comparative Fault)

27 13. The damages allegedly suffered by Plaintiff, if any, are the direct and proximate  
28 result of the acts or omissions of parties other than Defendant, and the liability of Defendant, if any,



1 is limited in direct proportion to the percentage of fault actually attributed to Defendant.

2 **THIRTEENTH AFFIRMATIVE DEFENSE**

3 (Obligations Discharged)

4 14. Defendant has performed and fully discharged any and all obligations and legal duties  
5 to Plaintiff pertinent to the matters alleged in the Complaint.

6 **FOURTEENTH AFFIRMATIVE DEFENSE**

7 (Managerial Discretion)

8 15. Regarding all of Plaintiff's causes of action, the decisions made regarding Plaintiff's  
9 employment were in the exercise of proper managerial discretion and in good faith based on  
10 legitimate reasons.

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 (Failure to Exhaust External Administrative Remedies)

13 16. Regarding Plaintiff's causes of action, Defendant is informed and believes those  
14 causes of action are barred by Plaintiff's failure to exhaust external administrative remedies with the  
15 appropriate public or governmental agencies.

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

17 (California Fair Employment and Housing Act)

18 17. Defendant alleges that Plaintiff's claims under the California Fair Employment and  
19 Housing Act may not be maintained to the extent they exceed or differ from the allegations of an  
20 administrative charge filed with the appropriate agency.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 (Pre-Existing Injury)

23 18. To the extent Plaintiff suffered any symptoms of mental or emotional distress or  
24 injury, they were the result of a pre-existing psychological disorder or alternative concurrent cause,  
25 and not the result of any act or omission of Defendant.

26 **EIGHTEENTH AFFIRMATIVE DEFENSE**

27 (After-Acquired Evidence)

28 19. Based on Plaintiff's alleged wrongdoing, Plaintiff's claim of wrongful discharge is

1 barred in whole or in part by the doctrine of after-acquired evidence.

2 **NINETEENTH AFFIRMATIVE DEFENSE**

3 (Unauthorized Discrimination)

4 20. Defendant denies that it authorized, ratified, acquiesced in, had knowledge of, had  
5 reason to know of approved or directed action by any persons or entities, constituting discrimination,  
6 whether as alleged or otherwise.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 (No Ratification)

9 21. Defendant denies that it authorized, ratified, acquiesced in, had knowledge of, had  
10 reason to know of, approved of, or directed action by any person or entities, constituting unlawful  
11 conduct towards Plaintiff, whether as alleged or otherwise.

12 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

13 (Failure to Avoid Harm)

14 22. Defendant exercised reasonable care to prevent and correct promptly any  
15 discriminatory practice or behavior in the workplace. Defendant is informed and believes, and on  
16 that basis alleges, that Plaintiff unreasonably failed to take advantage of any preventive or corrective  
17 opportunities provided by Defendant to avoid such harm.

18 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

19 (Unclean Hands)

20 23. Defendant alleges that Plaintiff's Complaint is barred by the doctrine of unclean  
21 hands.

22 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

23 (Additional Affirmative Defenses)

24 24. Defendant currently has insufficient information available upon which to form a  
25 belief as to whether it has additional, as yet unstated, affirmative defenses available. Defendant  
26 reserves the right to assert additional affirmative defenses in the event discovery indicates they  
27 would be appropriate.

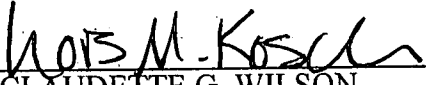
28 WHEREFORE, Defendant prays as follows:

1. That Plaintiff's Complaint and all claims and causes of action therein be dismissed with prejudice;
2. That Plaintiff take nothing by this action;
3. That judgment be entered against Plaintiff and in favor of Defendant;
4. That Defendant be awarded its costs incurred in this action, including reasonable attorneys' fees; and
5. That this court grant Defendant such other and further legal or equitable relief as the court deems just and proper.

Dated: June 13, 2008

**WILSON PETTY KOSMO & TURNER LLP**

By:

  
\_\_\_\_\_  
CLAUDETTE G. WILSON  
LOIS M. KOSCH  
Attorneys for Defendant  
BLOCKBUSTER INC.

<b>SAN DIEGO SUPERIOR COURT, STATE OF CALIFORNIA</b>		<b>COURT USE ONLY</b>
TITLE OF CASE (ABBREVIATED) <b>Erik Elliott v. Blockbuster, Inc.</b>		CENTRAL DIVISION 2008 JUN 13 PM 12:02 SAN DIEGO COUNTY, CA
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): <b>CLAUDETTE G. WILSON (110076)</b> <b>LOIS M. KOSCH (131859)</b> <b>WILSON PETTY KOSMO &amp; TURNER LLP</b> 550 West C Street, Suite 1050 San Diego, CA 92101		
TELEPHONE NO.: Tel. (619) 236-9600 Fax: (619) 236-9669		
ATTORNEYS FOR: Defendant BLOCKBUSTER INC.	HEARING DATE - TIME	
		CASE NUMBER: 37-2008-00082941-CU-WT-CTL

**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is Wilson Petty Kosmo & Turner LLP, 550 West C Street, Suite 1050, San Diego, CA 92101.

On June 13, 2008, I served the following documents:

1. DEFENDANT BLOCKBUSTER, INC.'S ANSWER TO COMPLAINT

I served the documents on the person below, as follows:

Dale Larabee, Esq.  
Joel Larabee, Esq.  
Law Offices of Larabee Gienapp Larabee, APC  
2120 Fourth Ave  
San Diego, CA 92101  
Tel: 619-234-3054  
Fax: 619-234-3001  
*Counsel for Plaintiff ERIK ELLIOTT*

- ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addressed below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☐ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California, that the above is true and correct. Executed on June 13, 2008, at San Diego, California.

  
Crystalin D. Morris

<b>SAN DIEGO SUPERIOR COURT, STATE OF CALIFORNIA</b>		<b>COURT USE ONLY</b>
TITLE OF CASE (ABBREVIATED) <b>Erik Elliott v. Blockbuster, Inc.</b>		
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): <b>CLAUDETTE G. WILSON (110076)</b> <b>LOIS M. KOSCH (131859)</b> <b>WILSON PETTY KOSMO &amp; TURNER LLP</b> <b>550 West C Street, Suite 1050</b> <b>San Diego, CA 92101</b>	TELEPHONE NO.: <b>Tel. (619) 236-9600</b> <b>Fax: (619) 236-9669</b>	
ATTORNEYS FOR: <b>Defendant BLOCKBUSTER INC.</b>	HEARING DATE - TIME	CASE NUMBER: <b>37-2008-00082941-CU-WT-CTL</b>

**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is Wilson Petty Kosmo & Turner LLP, 550 West C Street, Suite 1050, San Diego, CA 92101.

On June 13, 2008, I served the following documents:

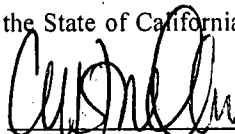
1. **NOTICE OF REMOVAL TO FEDERAL COURT**

I served the documents on the person below, as follows:

Dale Larabee, Esq.  
Joel Larabee, Esq.  
Law Offices of Larabee Gienapp Larabee, APC  
2120 Fourth Ave  
San Diego, CA 92101  
Tel: 619-234-3054  
Fax: 619-234-3001  
**Counsel for Plaintiff ERIK ELLIOTT**

- ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
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- ☐ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California, that the above is true and correct. Executed on June 13, 2008, at San Diego, California.

  
Crystalin D. Morris

<b>UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA</b>		<b>COURT USE ONLY</b>
TITLE OF CASE (ABBREVIATED) Erik Elliott v. Blockbuster, Inc.		
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): CLAUDETTE G. WILSON (110076) LOIS M. KOSCH (131859) <b>WILSON PETTY KOSMO &amp; TURNER LLP</b> 550 West C Street, Suite 1050 San Diego, CA 92101		
ATTORNEYS FOR: Defendant, Blockbuster Inc.	HEARING DATE - TIME	CASE NUMBER:

**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is Wilson Petty Kosmo & Turner LLP, 550 West C Street, Suite 1050, San Diego, CA 92101.

On June 13, 2008, I served the following documents:

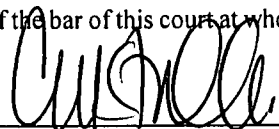
1. NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441 (a) (DIVERSITY)

I served the documents on the person below, as follows:

Dale Larabee, Esq.  
Joel Larabee, Esq.  
Law Offices of Larabee Gienapp Larabee, APC  
2120 Fourth Ave  
San Diego, CA 92101  
Tel: 619-234-3054  
Fax: 619-234-3001  
*Counsel for Plaintiff ERIK ELLIOTT*

- ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on June 13, 2008, at San Diego, California.

  
Crystalin D. Morris

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 151935 - TC  
\* \* C O P Y \* \*  
June 13, 2008  
12:24:33**

**Civ Fil Non-Pris**

USAO #: 08-CV1053

Judge.: DANA M SABRAW

Amount.: \$350.00 CK

Check#: BC1632

**Total-> \$350.00**

**FROM: ERIK ELLIOT  
VS. BLOCKBUSTER INC.**



## CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Erik Elliott

## DEFENDANTS

Blockbuster Inc.

FILED

08 JUN 13 PM 12:22  
 '08 CV 1053 DMS POR  
 U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Dale Larabee / Joel Larabee  
 Larabee Gienapp Larabee  
 2120 Fourth Avenue  
 San Diego, CA 92101  
 (619) 234-3054

Attorneys (If Known)

Claudette G. Wilson / Lois M. Kosch  
 Wilson Petty Kosmo & Turner LLP  
 550 West C. Street, Suite 1050  
 San Diego, CA 92101  
 (619) 236-9600

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motion to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1441(a)  
 Religious intimidation; physical disability discrimination;  
 wrongful termination in violation of public policy (California Gov  
 Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$  
 UNDER F.R.C.P. 23

☐ CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
 June 13, 2008

SIGNATURE OF ATTORNEY OF RECORD

Lois M. Kosch

FOR OFFICE USE ONLY

RECEIPT #

151935

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

CSDJS44

<b>UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA</b>		COURT USE ONLY
TITLE OF CASE (ABBREVIATED) Erik Elliott v. Blockbuster, Inc.		
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): CLAUDETTE G. WILSON (110076) LOIS M. KOSCH (131859) <b>WILSON PETTY KOSMO &amp; TURNER LLP</b> 550 West C Street, Suite 1050 San Diego, CA 92101	TELEPHONE NO.: Tel. (619) 236-9600 Fax: (619) 236-9669	
ATTORNEYS FOR: Defendant, Blockbuster Inc.	HEARING DATE - TIME	
		CASE NUMBER:

**PROOF OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is Wilson Petty Kosmo & Turner LLP, 550 West C Street, Suite 1050, San Diego, CA 92101.

On June 13, 2008, I served the following documents:

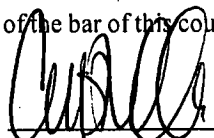
1. CIVIL COVER SHEET

I served the documents on the person below, as follows:

Dale Larabee, Esq.  
Joel Larabee, Esq.  
Law Offices of Larabee Gienapp Larabee, APC  
2120 Fourth Ave  
San Diego, CA 92101  
Tel: 619-234-3054  
Fax: 619-234-3001  
*Counsel for Plaintiff ERIK ELLIOTT*

- ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addressed below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☐ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on June 13, 2008, at San Diego, California.

  
Crystall D. Morris